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CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

## **ASSEMBLY BILL**

**No. 770**

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### **Introduced by Assembly Member Mullin**

February 18, 2005

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An act to amend Section 11504 of the Business and Professions Code, and to amend Section 1373 of, to add Section 1363.7 to, and to add Chapter 11 (commencing with Section 1380.010) to Title 6 of Part 4 of Division 2 of, the Civil Code, relating to common interest developments.

#### LEGISLATIVE COUNSEL'S DIGEST

AB 770, as amended, Mullin. Common interest developments: ombudsperson.

(1) Existing law requires a person who either provides or contemplates providing the services of a common interest development manager to a community association to annually disclose to the board of directors of the community association specified information, including whether or not he or she has met certain requirements to be called a certified common interest development manager and the location of his or her primary office.

This bill would require this information to be disclosed in writing, and would additionally require the person to disclose whether or not he or she has read the governing documents of the community association.

(2) The Davis-Stirling Common Interest Development Act defines and regulates common interest developments, which include condominiums and planned developments. The act requires that a common interest development be managed by an association, and establishes requirements for association operating rules and meetings and for the resolution of specified disputes. Among other things, the act requires the association that manages a development to provide a fair, reasonable, and expeditious procedure for resolving disputes between the association and members of the association involving their rights, duties, or liabilities under the act. The act also requires an association or an owner of a separate interest or a member of an association to endeavor to submit their dispute to alternative dispute resolution before they file certain enforcement actions in the superior court.

This bill would, until July 1, 2009, establish in the Department of Consumer Affairs, the Office of the Common Interest Development Ombudsperson. The bill would require the Ombudsperson, to report annually to the Legislature, and to submit recommendations to the Legislature on specified topics by January 1, 2009. The bill would require the Ombudsperson, commencing July 1, 2007, to offer training materials and courses to common interest development directors, officers, and owners, in subjects relevant to the operation of a common interest development and the rights and duties of an association or owner. The bill would require the Ombudsperson to maintain a toll-free telephone number and Internet Web site for purposes of further providing that information and assistance, and would require an association director or agent to meet certain requirements in that regard. The bill would authorize the Ombudsperson to provide assistance in resolving common interest development disputes, as specified.

This bill would impose a biennial association fee on common interest development associations, payable upon filing specified information with the Secretary of State. The bill would require the Secretary of State to deposit the fee revenue in a newly created fund, the Fee Account of the Common Interest Development Ombudsperson Fund, for the administration of these provisions upon appropriation by

the Legislature. The bill would require the Secretary of State to develop a form for an association that is excused from paying the fee to certify that another association has paid the fee, as specified. The bill would provide that costs incurred by the Secretary of State pursuant to these provisions shall be reimbursed from the Common Interest Development Ombudsperson Fund.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 11504 of the Business and Professions  
2     Code is amended to read:  
3     11504. (a) On or before September 1, 2003, and on an annual  
4     basis thereafter, a person who either provides or contemplates  
5     providing the services of a common interest development  
6     manager to a community association shall disclose to the board  
7     of directors of the community association the following  
8     information in writing:  
9     (1) Whether or not the common interest development manager  
10    has met the requirements of Section 11502 so he or she may be  
11    called a certified common interest development manager.  
12    (2) The name, address, and telephone number of the  
13    professional association that certified the common interest  
14    development manager, the date the manager was certified, and  
15    the status of the certification.  
16    (3) The location of his or her primary office.  
17    (4) Prior to entering into or renewing a contract with a  
18    community association, the common interest development  
19    manager shall disclose to the governing board of the community  
20    association whether the fidelity insurance of the community  
21    manager or his or her employer covers the operating and reserve  
22    funds of the community association. This requirement may not  
23    be construed to compel or require a community association or  
24    common interest development manager to require fidelity  
25    insurance.  
26    (5) Possession of an active real estate license, if applicable.  
27    (6) Whether or not the common interest development manager  
28    has read the governing documents of the community association.

(b) This section may not preclude a common interest development manager from disclosing information as required in Section 1363.1 of the Civil Code.

SEC. 2. Section 1363.7 is added to the Civil Code, to read:

1363.7. ~~An~~*On or before July 1, 2007, and annually thereafter,* an association shall provide its members with annual written notice of the Internet Web site address and toll-free telephone number of the Common Interest Development Ombudsperson established pursuant to Chapter 11 (commencing with Section 1380.010).

SEC. 3. Section 1373 of the Civil Code is amended to read:

1373. (a) The following provisions do not apply to a common interest development that is limited to industrial or commercial uses by zoning or by a declaration of covenants, conditions, and restrictions that has been recorded in the official records of each county in which the common interest development is located:

(1) Section 1356.

(2) Article 4 (commencing with Section 1357.100) of Chapter 2.

(3) Subdivision (b) of Section 1363.

(4) Section 1365.

(5) Section 1365.5.

(6) Subdivision (b) of Section 1366.

(7) Section 1366.1.

(8) Section 1368.

(9) Section 1378.

(10) Chapter 11 (commencing with Section 1380.010).

(b) The Legislature finds that the provisions listed in subdivision (a) are appropriate to protect purchasers in residential common interest developments; however, the provisions may not be necessary to protect purchasers in commercial or industrial developments since the application of those provisions could result in unnecessary burdens and costs for these types of developments.

SEC. 4. Chapter 11 (commencing with Section 1380.010) is added to Title 6 of Part 4 of Division 2 of the Civil Code, to read:

CHAPTER 11. COMMON INTEREST DEVELOPMENT  
OMBUDSPERSON PILOT PROJECT

Article 1. Definitions

1380.010. Unless the provision or context otherwise requires, the definitions in this article govern the construction of this chapter.

1380.020. “Owner” means the owner of a separate interest.

1380.030. “Person” includes a natural person, firm, association, organization, partnership, business trust, corporation, limited liability company, or public entity.

Article 2. Administration

1380.100. The Legislature finds and declares all of the following:

(a) There are more than 41,000 residential common interest developments in California, comprising more than 4,300,000 dwellings. Common interest developments comprise approximately one-quarter of the state’s housing stock.

(b) Managing a common interest development is a complex responsibility. Community associations are run by volunteer directors who may have little or no prior experience in managing real property, operating a nonprofit association or corporation, complying with the law governing common interest developments, and interpreting and enforcing restrictions and rules imposed by the governing documents of the common interest development. Homeowners may not fully understand their rights and obligations under the law and the governing documents. Mistakes and misunderstandings are inevitable and may lead to serious, costly, and divisive problems. The Common Interest Development Ombudsperson seeks to educate community association officers and homeowners as to their legal rights and obligations. Effective education can prevent or reduce the severity of problems within a common interest development.

(c) The principal remedy for a violation of common interest development law is private litigation. Litigation is not an ideal remedy for many common interest development disputes, where the disputants are neighbors who must maintain ongoing

relationships. The adversarial nature of litigation can disrupt these relationships, creating animosity that degrades the quality of life within the community and makes future disputes more likely to arise. Litigation imposes costs on a common interest development community as a whole, costs that must be paid by all members through increased assessments. Many homeowners cannot afford to bring a lawsuit and are effectively denied the benefit of laws designed for their protection. The Common Interest Development Ombudsperson provides a neutral, nonjudicial forum for resolution of common interest development disputes.

(d) Anecdotal accounts of abuses within common interest developments create continuing public demand for reform of common interest development law. This results in frequent changes to the law, making it more difficult to understand and apply and imposing significant transitional costs on common interest developments statewide. By collecting empirical data on the nature and incidence of problems within common interest developments, the Common Interest Development Ombudsperson provides a sound basis for prioritizing reform efforts, thereby increasing the stability of common interest development law.

(e) The costs of the Common Interest Development Ombudsperson Pilot Project shall be borne entirely by common interest development homeowners, through imposition of a biennial fee.

1380.110. (a) There is in the Department of Consumer Affairs the Office of the Common Interest Development Ombudsperson, under the supervision and control of the Director of Consumer Affairs.

(b) Commencing July 1, 2007, the Director of Consumer Affairs shall employ, pursuant to the State Civil Service Act (Part 2 (commencing with Section 18500) of Division 5 of Title 2 of the Government Code), a Common Interest Development Ombudsperson and other officers and employees as necessary to discharge the requirements of this chapter. The Common Interest Development Ombudsperson shall have the powers delegated by the director.

(c) The Ombudsperson—~~shall~~ *may* adopt rules governing practices and procedures under this chapter. Any rule adopted

1 under this subdivision is subject to the rulemaking provisions of  
2 the Administrative Procedure Act (Chapter 3.5 (commencing  
3 with Section 11340) of Part 1 of Division 3 of Title 2 of the  
4 Government Code).

5 (d) Information and advice provided by the Ombudsperson has  
6 no binding legal effect and is not subject to the rulemaking  
7 provisions of the Administrative Procedure Act (Chapter 3.5  
8 (commencing with Section 11340) of Part 1 of Division 3 of Title  
9 2 of the Government Code).

10 (e) The Ombudsperson may convene an advisory committee to  
11 make recommendations on matters within the Ombudsperson's  
12 jurisdiction. A member of an advisory committee shall receive  
13 per diem and expenses pursuant to Section 103 of the Business  
14 and Professions Code. In selecting the members of an advisory  
15 committee, the Ombudsperson shall ensure a fair representation  
16 of the interests involved.

17 1380.120. The Common Interest Development  
18 Ombudsperson shall report annually to the Legislature, no later  
19 than October 1 of each year. The report shall include all of the  
20 following information:

21 (a) Annual workload and performance data, including the  
22 number of requests for assistance received, the manner in which  
23 a request was or was not resolved, and the staff time required to  
24 resolve the inquiry. For each category of data, the Ombudsperson  
25 shall provide subtotals based on the type of question or dispute  
26 involved in the request.

27 (b) Analysis of the most common and serious types of disputes  
28 within common interest developments, along with any  
29 recommendations for statutory reform to reduce the frequency or  
30 severity of those disputes.

31 (c) On or before January 1, 2009, the Ombudsperson shall  
32 submit recommendations to the Legislature on the following  
33 topics:

34 (1) Whether the Ombudsperson should be authorized to  
35 enforce common interest development law.

36 (2) Whether the Ombudsperson should be authorized to  
37 oversee association elections.

38 (3) Whether the scope of application of Section 1380.230  
39 should be narrowed or broadened.

(4) Whether the Ombudsperson should provide or subsidize mediation of common interest development disputes.

1380.130. (a) On filing information with the Secretary of State every two years, pursuant to subdivision (a) of Section 1363.6, an association shall submit a Common Interest Development Ombudsperson fee. This fee is in addition to the fee submitted pursuant to Section 1363.6. Failure to submit the Common Interest Development Ombudsperson fee is deemed noncompliance with Section 1363.6. Costs incurred by the Secretary of State pursuant to this section shall be reimbursed from the Common Interest Development Ombudsperson Fund.

(b) The Common Interest Development Ombudsperson fee shall equal the number of separate interests within the association multiplied by the biennial fee amount. The biennial fee amount is two dollars (\$2).

(c) An association is excused from paying the fee for a separate interest if another association has paid the fee for that separate interest. An association that is excused from paying the fee for a separate interest shall certify, on a form developed by the Secretary of State for that purpose, that another association has paid the fee for that separate interest. The Ombudsperson may adopt, by regulation, a rule governing which association is required to pay the fee for a separate interest that is part of more than one association.

(d) Subdivision (b) of Section 1366 does not limit an assessment increase necessary to recover the fee imposed by this section.

1380.140. Common Interest Development Ombudsperson fee revenue received by the Secretary of State and fee revenue received by the Common Interest Development Ombudsperson shall be transferred to the State Treasurer and placed in the Fee Account of the Common Interest Development Ombudsperson Fund, which is hereby created. All funds in the Fee Account of the Common Interest Development Ombudsperson Fund, upon appropriation by the Legislature, are to be used exclusively for expenditures necessary for the proper administration of this chapter.

1380.150. (a) This chapter shall remain in effect only until July 1, 2009, and as of that date is repealed, unless a later enacted



1 statute that is enacted before July 1, 2009, deletes or extends that  
2 date.

3 (b) The Common Interest Development Ombudsperson Pilot  
4 Project is subject to the sunset review process conducted by the  
5 Joint Committee on Boards, Commissions, and Consumer  
6 Protection pursuant to Division 1.2 (commencing with Section  
7 473) of the Business and Professions Code.

8 (c) Article 3 (commencing with Section 1380.200) and Article  
9 4 (commencing with Section 1380.300) shall become operative  
10 on July 1, 2007.

11  
12 Article 3. Education  
13

14 1380.200. (a) The Common Interest Development  
15 Ombudsperson shall offer training materials and courses to  
16 common interest development directors, officers, and owners, in  
17 subjects relevant to the operation of a common interest  
18 development and the rights and duties of an association or owner.

19 (b) The Ombudsperson may charge a fee for training materials  
20 or courses, not to exceed their actual cost.

21 1380.210. The Common Interest Development  
22 Ombudsperson shall maintain a toll-free telephone number to  
23 provide information or assistance on matters relating to common  
24 interest developments.

25 1380.220. (a) The Common Interest Development  
26 Ombudsperson shall maintain an Internet Web site, which shall  
27 provide all of the following information:

28 (1) The text of this title, the Nonprofit Mutual Benefit  
29 Corporation Law (Part 3 (commencing with Section 7110) of  
30 Division 2 of Title 1 of the Corporations Code), and any other  
31 statute or regulation that the Ombudsperson determines would be  
32 relevant to the operation of a common interest development or  
33 the rights and duties of an association or owner.

34 (2) Information concerning nonjudicial resolution of disputes  
35 that may arise within a common interest development, including  
36 contacts for locally available dispute resolution programs  
37 organized pursuant to Chapter 8 (commencing with Section 465)  
38 of Division 1 of the Business and Professions Code.

1 (3) A description of the services provided by the  
2 Ombudsperson and information on how to contact the  
3 Ombudsperson for assistance.

4 (4) An analysis, prepared each year, of legislative changes to  
5 common interest development law.

6 (5) Any other information that the Ombudsperson determines  
7 would be useful to an association or owner.

8 (b) Information provided on the Ombudsperson's Internet  
9 Web site shall also be made available in printed form. The  
10 Ombudsperson may charge a fee for the purchase of printed  
11 material, not to exceed the actual cost of printing and delivery.

12 1380.230. (a) Within 60 days of assuming office as an  
13 association director, the director shall certify that he or she has  
14 read each of the following:

15 (1) The declaration, articles of incorporation or association,  
16 and bylaws of the association.

17 (2) This title or, if the Common Interest Development  
18 Ombudsperson prepares a detailed summary of the requirements  
19 of this title, that summary.

20 (b) A director shall file the certification required by this  
21 section with the Ombudsperson.

#### 22 Article 4. Informal Dispute Resolution

23  
24 25 1380.300. (a) Any interested person may request that the  
26 Office of the Common Interest Development Ombudsperson  
27 provide assistance in resolving a dispute between an association  
28 and an owner that involves the law governing common interest  
29 developments or the governing documents of a common interest  
30 development.

31 (b) On receipt of a request for assistance, the Ombudsperson  
32 shall, within the limits of the available resources, confer with the  
33 interested parties and assist in efforts to resolve the dispute by  
34 mutual agreement of the parties.

35 The Ombudsperson shall not charge a fee for this service.